CORONER'S INQUEST
INTO THE DEATH OF
RICHARD PEDRO PEREZ

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CORONER'S CASE NO. 2014-3945

WEDNESDAY, DECEMBER 10, 2014

CONTRA COSTA SUPERIOR COURT
Department 1, Room 21020 Ward Street
Martinez, California

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A-P-P-E-A-R-A-N-C-E-S

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I-N-D-E-X

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Wednesday, December 10, 2014 9:00 a.m.

P-R-O-C-E-E-D-I-N-G-S

MR. GUICHARD: So we will go on the record in this matter, and when I say on the record, that means that the court reporter is hearing and taking down everything that is said. When I say off the record, that means we'll go off the record and take breaks.

This is a formal hearing. It's a Coroner's Inquest is what it's called, and it's an inquiry into the death of an individual. The individual's name is Richard Pedro Perez III.

My name is Matthew Guichard, and I'm the hearing officer for this matter and I've been retained by the Contra Costa County Sheriff Coroner's office to conduct this hearing.

I've conducted many hundreds of these kinds of Coroner's Inquest. And in this county, as in many other counties, the sheriff is also the elected Coroner, and as a matter of public policy in this County, the Coroner's Inquest can be any time there's a direct connection between a law enforcement agency in this County and the death of a human being. And I emphasize that it's a matter of public policy because you should not make any assumption one way or the other as to whether there is something unusual or problematic about

this case. We are simply here because there's a law enforcement connection to the death.

And I will tell you that because if somebody dies of natural causes in the jail, we would have a formal Coroner's Inquest. If there is a chase and somebody dies, we have a formal Coroner's Inquest.

In this case this is a police shooting case. And I want to emphasize that your role as jurors in this case is to decide, and I'll repeat this a number of times, what one, of the four modes of death, apply. And throughout the United States, and in most states and here in California, there are only four modes of death. That any death can be -- you can't mix them up -- one is suicide, one is natural causes, one is accident, and one is at the hands of another, other than by accident.

And I will read instructions to you at the end of the case which will define each and every one of them. As you can understand, it's fairly understandable on its face to say if somebody dies in the jail of a heart attack, that would be natural causes. Somebody -- if there's sufficient evidence to show that somebody committed suicide, that would be suicide. If it's an accident and somebody is killed in an automobile accident or something such as that, generally based on those facts, it would be an accident.

And generally if, in fact, there is some kind of shooting or purposeful act, that would be at the hands of another other than by accident. I'm saying this a little bit today because I'm very mindful, and all of us in this courtroom, are mindful of the fact that what happened in Ferguson and in Cleveland, Mr. Garner in New York, and this is not to try any individual. It's not to try police officers. It's not to say whether or not the decedent in this case is a good person or a bad person. This is not a civil matter. This is not the time to protest. It is simply we're going to put out in the open the circumstances of the death of this gentleman, a young man from Richmond, California. And so I want to keep emphasizing that, and I'm going to continue to emphasize that over the course of this hearing.

Given everything that we've read in the paper, you must put all of that aside and decide this case based only on the evidence that you hear here today.

Before we move into the evidence phase of this hearing, I'm going to ask some questions of the jurors to determine whether or not you're qualified to sit as jurors.

And first and foremost as I say today, this hearing will undoubtedly be completed prior to the noon hour.

I'm the hearing officer, I've recently reviewed the evidence and the reports in this matter, and I'm going to call four witnesses. One is the pathologist, one is the officer directly involved, one is a detective from the Richmond Police Department, and one is a senior inspector from the Contra Costa District Attorney's office.

And in all police-related deaths, whether an accident, homicide, in any respect there is always the District Attorney's office gets involved and they lead the investigation, and you will hear how that protocol, you will hear about that and the extensive nature of the investigation that happened in this case.

As jurors in the Coroner's Inquest you will be asked to listen to the testimony, and perhaps other evidence, and render a verdict as to the legal mode of death. Do not leave your reason or your common sense outside this courtroom here.

I say sit today because I anticipate, as I said, the matter will be concluded not later than the end of this morning's session. It could go over into the afternoon.

And I'll tell you, frankly, in my experience when we've been somewhere around the noon hour and we have a little bit more to go, I always ask the jury if you'd like to

take a break and come back at 1:30. And in my 20 years of experience or so doing this, I've never had a jury say sure, let's take a break if we have another 15 or 20 minutes of testimony. So just to let you know I anticipate that. And that estimate includes jury deliberation time as well.

Now, based on the time estimate, is there anyone here who believes it would be such a hardship that they couldn't sit as a juror here this morning in this matter?

Seeing no affirmative response, what I'm going to do is read, for the record, the list of jurors, and I'd ask you to please respond audibly so the court reporter can hear. Say here or present if you'd like.

[redacted].

A JUROR: Here.

MR. GUICHARD: [redacted].

A JUROR: Here.

MR. GUICHARD: [redacted].

A JUROR: Here.

MR. GUICHARD: [redacted].

A JUROR: Here.

MR. GUICHARD: [redacted].

A JUROR: Here.

MR. GUICHARD: [redacted].

A JUROR: Here.

MR. GUICHARD: You have to say here so the court reporter can take it down.

[redacted].

A JUROR: Here.

MR. GUICHARD: And [redacted].

A JUROR: Here.

MR. GUICHARD: All right. As you can see, we don't have 12 jurors. A Coroner's Inquest can have anywhere from 8 to 15 jurors. We have eight jurors here today.

I'm going to say a little something. We'll be taking some breaks, not an awful lot of breaks, generally for the court reporter, and for witnesses, and sometimes emotional things happen in a matter such as this and I deem it proper to take a break. So we'll take some breaks.

I do ask that the jury please not have discussions with anyone in the audience, nor anyone in the audience with any of the witnesses, just so we don't have the appearance of impropriety. It's important that the case not be discussed by the juror until you go into deliberations.

So if you go into the men's room or ladies' room and you see a fellow juror there, don't discuss the facts of the case at all. That admonition applies all

the way until the end of the case when you are in here deliberating, then you can discuss the case. Everyone understand that?

THE JURY: Yes.

MR. GUICHARD: Seeing affirmative responses. Thank you.

Do any of you know, or have you heard of the decedent Richard Pedro Perez III of Richmond, California?

THE JURY: No.

MR. GUICHARD: I'm going to read a witness list to you and I'm going to ask any of you if you know or have heard of any of these witnesses.

MR. GUICHARD: Dr. Arnold Josselson.

THE JURY: No.

MR. GUICHARD: Richmond Police Officer Wallace Jensen.

THE JURY: No.

MR. GUICHARD: Contra Costa County Senior District Attorney Inspector Jeff Soler.

THE JURY: No.

MR. GUICHARD: And Hector Esparza, a detective with the Richmond Police Department.

THE JURY: No.

MR. GUICHARD: All right.

Seeing and hearing no affirmative response.

I do want to say oftentimes in a trial somebody will say I didn't recognize the name, but when somebody took the stand I did recognize that person. That doesn't mean that you can't sit as a juror in this case if there is something that you think is unusual about it, and we often find, well, that's the person that gave me a ticket I remember a year ago, and I wasn't happy about that, bring it to my attention and we'll talk about it.

Keep in mind that whether you got a ticket from an officer or you had some experience in the past, that has nothing to do with what's going on here today, and I would simply ask if you could set that aside and view the evidence that you will hear in this case today, together with the law that I'm going to read to you at the end of the case and decide again one of the four modes of death.

So everyone understands that?

THE JURY: Yes.

MR. GUICHARD: All right. You've heard the witness list. Do any of you have any friends or relatives employed by the Richmond Police Department?

THE JURY: No.

MR. GUICHARD: All right. Do any of you have any

friends or relatives employed by the Contra Costa County Sheriff's Department?

THE JURY: No.

MR. GUICHARD: Any friends or relatives employed by the Contra Costa County District Attorney's Office?

THE JURY: No.

MR. GUICHARD: All right. Circumstances of the death. As I said, this is a death. It's a shooting case, and just the nature of that sometimes is so distressing to people, the nature of a death, that some jurors indicate that I simply don't want to have anything to do with that.

I can assure you you're not going to see any photographs, you're not going to see anything such as that. You will hear testimony from a pathologist who will talk about the cause of death, the legal cause of death, and that doctor, Dr. Josselson, will discuss the evidence of the autopsy and what he found. And sometimes that's graphic, but you will not see any photographs or anything.

Anyone have any issues with that based on what I've just told you and think that you couldn't sit as a juror?

THE JURY: No.

MR. GUICHARD: All right. Thank you.

I am aware of some media reports about this particular incident. I actually saw it in the paper back when it happened in September. And I'm going to ask have any of you heard of the death of Mr. Perez from any source other than from me today?

THE JURY: No.

MR. GUICHARD: Okay. I'm going to go back a little bit and have a little bit of a discussion about the issue of during the course of the trial, something pops up. And during the course of this not a trial, this inquest, but just as a trial if something comes up and you say I do remember now, I do remember, ensure that that does not impact your ability to listen to the evidence here today.

We often read things in the paper this is -- you're not going to decide this case based on what you may have seen or heard in the paper. And if you've all answered no, I didn't see anything, but during the course you say now I do remember reading about it, can you all assure me that you will put that out of your mind and decide this case based solely on the evidence that you hear in this case?

THE JURY: Yes.

MR. GUICHARD: Okay. And understand again, accident, natural causes, suicide, or at the hands of

another, other than by accident. That's all you're going to decide here today as jurors. Thank you.

All right. Now, as I said, I will ask have you heard -- for that question to make any sense, I'll give you a brief summary of the facts of the case as I have read them from the report. And the sole purpose of the summary is to jog your memory. I am not a witness here today. What I am about to tell you is not evidence. Evidence in this matter will come in only by way of witnesses on the witness stand.

And remember, if you sit on the jury you must make your own determination based only on evidence properly admitted through witnesses and not from what I tell you, or from what you may have heard or read in some media source such as the newspaper.

Again, the decedent's name is Richard Pedro Perez III, and on September 14th of 2014 in Richmond out in front of Sam's Liquors there was contact by a Richmond officer with Mr. Perez. Ultimately a fight ensued, there was a struggle, and after a period of time that officer shot and killed Mr. Perez.

Have any of you heard that? Does that jog your memory in any fashion?

THE JURY: No.

MR. GUICHARD: Can each of you sit and listen to

the evidence and then decide the case based only on the evidence you hear from the stand and from no other source?

THE JURY: Yes.

MR. GUICHARD: Can any of you think of any reason, now that you've heard me speak about the issues, why you cannot sit as jurors in this case?

THE JURY: No.

MR. GUICHARD: I will say that the courtroom is filled. And normally in most trials, in spite of what you see on television, witnesses are excluded; only the people that are allowed to testify. Here it's an open hearing, so everyone is invited. I don't know any press members here, but generally there's somebody here from the press. Clearly Mr. Perez's family is here. There are a number of attorneys here, attorneys representing the Perez family. There are people, attorneys here from various other agencies, and that is standard in this kind of thing.

Occasionally, and I'll tell you this later on, occasionally during my questioning you will see Sgt. Shabazz get a note from a member of the audience, and that's from one of the attorneys, and that note is handed to me and it's generally a question that that attorney would like me to ask. And I decide whether or

not that question is relevant to the proceedings here today.

And understand we've spoken of Ferguson, we've spoken of Cleveland, and we've spoken of the things that have happened with Mr. Garner in New York. That's not this case here today. This case is only to decide again suicide, natural causes, accident, or at the hands of another, other than by accident.

So sometimes I've received in cases notes that ask questions that I deem not relevant. And you will typically not know if I read the question or if I don't read the question. And the only importance to a question is whether or not it's asked, and whether or not there is an answer to that.

During the course of these matters at breaks I may have a discussion with various attorneys. They may express to me they'd like me to ask certain questions, so I will be talking with people during the course of breaks, but I insist, and ask you to ensure that you don't.

Talk about this coming storm, talk about pretty much anything else you'd like. Now, other than a polite hello. Certainly you can say hello to somebody. A polite hello is appropriate.

I do understand that the family is here, and as you

can understand any time somebody loses a loved one, a child, something like that, it's a very emotional matter, and we may see something like that. And we'll try to keep that in mind, and understand we ask you, as jurors, to also keep that in mind. All right?

THE JURY: Yes.

MR. GUICHARD: Please remain in your seats. I'm going to give you the oath as jurors. You can remain in your seats, but please raise your right hands.

(Jury Oath administered by Mr. Guichard.)

MR. GUICHARD: This courtroom will be your courtroom for all purposes today. The seat over here (indicating) is for the witnesses. I will ask the witnesses to speak out to the jury so that you can understand. It's very important.

You're the fact finders in this case, and you're going to decide this case. So if you can't hear, we have a problem. So if you can't hear during the course of testimony, raise your hand and let us know and I'll make sure that the witness either speaks into the microphone, if we had one for the witness, and the court reporter will typically, since she has to take everything down, ask that a witness speak up.

So we want to ensure that you can hear everything, and please, for those of who have back problems, leg

problems, or knee problems, we'll take regular breaks. But if you need to stand up during the course of the hearing just in place, that's perfectly appropriate.

In an inquest such as this -- and it's a little bit unusual -- I, as the hearing officer, will be asking all of the questions. These are public hearings, so anyone who wishes to attend can sit in.

As I've indicated at times family members of the decedent are present, and we know that to be a fact. I introduced myself to them earlier today. Other than a polite hello, please do not speak with any members of the audience on any matter during the course of the proceedings, at breaks or at lunch.

Additionally, attorneys may be here representing the interests of particular parties as I've said, and if that is the case these attorneys may, if they wish, submit written questions to me. I will read those questions to myself and determine whether in my estimation, given the law and the purpose of this hearing, whether or not to ask a question submitted. If you observe those notes being handed up by -- to me by Sergeant Shabazz, please give it no significance.

As part of the role of jurors you will be asked at the end of the evidence to determine which of the one of four potential modes of death applies to the death. As

I've said, there are only four possible motives -- and you're going to hear this a lot from me here today -- and the four are natural causes, accident, suicide, and at the hands of another, other than by accident.

You will be asked at the end of all the evidence to determine which of those four applies, and only one applies. And at the end of all the evidence I will instruct you on the law in this case that will include definitions of each of the four modes of deaths. And again, keep in mind your own reason and common sense what you hear from the legal definitions.

And I've prepared jury instructions and at the end I have to read them out loud, but you'll each have a copy in hand while I read them, and you'll each have a copy in hand during your deliberations so that you can refer to those definitions if you so choose.

And let me caution you, however, at this point, you will not be asked, nor is it relevant for this type of hearing, to determine either civil or criminal liability or responsibility on the part of anyone: Not the decedent, not the officer, not anyone.

Does everyone understand that?

THE JURY: Yes.

MR. GUICHARD: I will now call our first witness. I'm going to call Dr. Arnold Josselson.

Good morning, Dr. Josselson. Will you raise your right hand, please.

DR. ARNOLD JOSSELSON,

called as a witness, having first been duly sworn by Mr. Guichard to testify the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION BY

MR. GUICHARD:

Q. Please be seated, state your name, and spell your last name for the record, please.

A. Good morning.

THE JURY: Morning.

THE WITNESS: My name is Dr. Arnold Josselson. That's J-O-S-S-E-L-S-O-N.

MR. GUICHARD:

Q. And, Doctor, can you tell us your profession, please.

A. Yes. I am a forensic pathologist.

Q. And could you tell us what your training and experience is and tell us what a forensic pathologist is.

A. A forensic pathologist is a pathologist who has specialized training in performing autopsies in order to determine the cause of death in sudden, unexpected,

unexplained, mysterious, or violent types of deaths.

As far as my education, I received my medical degree from Wayne State University in Michigan. I then did a rotating internship at the Philadelphia General Hospital.

I then did four years of residency training at UC San Diego in anatomic and in clinical pathology. I then worked as a hospital pathologist for about seven years.

I then did a year of fellowship, which is an extra year of training in forensic pathology at the Armed Forces Institute of Pathology in Washington, D.C.

I would estimate I performed over 8,000 autopsies in order to determine the cause of death.

Q. Doctor, did you conduct an autopsy on the body of Richard Pedro Perez III?

A. I did, yes.

Q. Can you tell us the date of death.

A. The date of death was September 14th of this year, 2014.

Q. And when did you perform, what date did you perform your autopsy?

A. The next day, September 15th.

Q. Can you tell us did you conduct an external examination of Mr. Perez's body?

A. I did, yes.

Q. And could you tell us the significant findings on the external examination.

A. Yes. Just to explain what this is, an autopsy really has two parts. The first part is called the external exam, and that's where you look at the external surface of the body for any injuries or natural disease processes that might be present.

After that we do what's called the internal exam where we open the body cavities and look at all the organs, and again looking for injuries or natural disease processes.

So on the external examination of the body the decedent appeared to be the stated age of 24. And there were a lot of blunt force injuries. A blunt force injury is -- could be a bruise on the surface of the body, or an abrasion, which is a scraping of the skin on the surface of the body. He had quite a few of these blunt force injuries consistent with a physical altercation.

I'll list them where all the bruises were and then where all the scratches on the skin surface were. There were quite a few bruises on his body. They were present on his right knee, his left knee, his right forearm, his left forearm, his right thigh, left ankle, and the lower abdomen.

And then there were quite a few scratches. Again, these were present on his left shoulder, his right ankle, his right palm, his right wrist, his right thumb, his right knee, his right lower leg, and his left forearm. These are all consistent with injuries that were suffered during a physical altercation.

Then there were three gunshots wounds to his body. Two of them were fatal gunshot wounds. The third was a non fatal gunshot wound. All three gunshot wounds went through the body so there were no bullets recovered.

One of the fatal gunshot wounds entered the left chest, that's the left side of the chest, went through the left chest cavity passing through the -- entering the left lung, passing through the aorta in the chest. The aorta is the major blood vessel in the body. It has its origin in the heart and supplies blood to the entire body.

The first part of the aorta is up in the chest and this bullet passed through the aorta, and then entered the right chest cavity, passed through the right lung. So left lung aorta, right lung (indicating).

It then deflected off a rib on the right chest cavity and then went up and through his right upper arm. So this was a fatal gunshot wound that went through the left chest, and then the right chest, and then hit a rib

and that caused it to deflect upward.

The path of this bullet was from his left side to his right side, from his front to his back, and a downward direction (indicating).

The second gunshot wound was also a fatal gunshot wound. This one went through the left chest and the abdomen. It entered the left chest, lateral, which means towards the outside. It went through the left lung, then entered the abdominal cavity, went through the spleen, which is an organ on the left side of the abdomen, went through the liver, and then exited in the back through the lower part of the back. So this gunshot wound went from his left to his right, and front to back (indicating).

And the last gunshot wound was a non fatal gunshot wound. Again, there was an entry and an exit. And it entered on the left side of the abdomen. It did not actually enter the abdominal cavity, passed behind the right femur, which is the large bone in the leg, and exits the body on the back of the right thigh. So this gunshot wound also went left to right like the other two, and from his front to his back, and then a downward path.

So three gunshot wounds. One went through the left chest, then the right chest; fatal gunshot wound. The

second fatal gunshot went through the left chest and the abdomen. And the third gunshot wound, which was not fatal, entered the abdomen, the abdominal wall, and exited the thigh. That was a non fatal wound.

Q. All right. Now, I normally ask you significant internal findings and I think you have already testified to the significant internal findings.

Can you tell us the cause of death, the medical cause of death.

A. Yes. In my opinion, the cause of death was one gunshot wound to the chest, and one gunshot wound to the chest and the abdomen.

Q. Now, during the course of an autopsy, Doctor, do you normally do -- take blood for toxicology studies?

A. Yes, we do.

Q. And, in fact, in this case did you do that?

A. Yes.

Q. And can you tell me have you reviewed the results of those toxicology studies?

A. I have, yes.

Q. Can you please tell us the results that you've obtained.

A. Yes. At the time of his death there was alcohol in his blood. The level was .247. That's about

three times the .08 which is the level of someone to be driving under the influence of alcohol. So it was .247.

He also had a low level of drug called Clonazepam which is usually used to treat seizures. I don't know if he had a history of seizures or not, but this drug was in his blood at a rather low level.

There was an antidepressant drug in his blood at a therapeutic level. It's called Fluoxetine, and then there was Diphenhydramine, which is Benadryl, again in a therapeutic level.

Q. So what does a therapeutic level mean, Doctor?

A. This is a level you would expect on someone who takes the drug for a medical reason, not abusing the drug.

Q. All right. And anything else of significance in the toxicology studies?

A. No.

Q. All right. Doctor, is there anything else you'd like to add to your testimony here this morning?

A. No.

MR. GUICHARD: All right. Thank you. You're free to go.

Ladies and Gentlemen, I said we'd take a break every hour on the hour. So what we're going to do is we're going to take a very quick break, about a

five-minute break, because we have some members of the audience standing and we don't want to have the door blocked.

So what I'm going to direct is perhaps we can use these four chairs, put them back in that part of this courtroom, and allow these people who are standing to have a seat.

I noticed the jurors were watching a lot of people coming in, and I appreciate the fact that there's a little bit of disruption in the courtroom. So what I'd like to do is make sure we don't have that so you can concentrate on the testimony in the case rather than the people that are entering.

So let's get these chairs moved and we'll hopefully get some more people seated.

We're going to take a little longer. So we'll take a ten-minute break. So let's be back here promptly at 20 minutes to. And I say promptly as there are an awful lot of members of the audience. Let's make sure we get back and get seated so there is no disruption and we can continue.

(Recess taken.)

MR. GUICHARD: We are back on the record in the matter of the death of Richard Pedro Perez III.

And I'm going to call our next witness. And I'm

going to call Richmond Police officer Wallace Jensen.

MR. GUICHARD: Good morning, Officer. Can you raise your right hand.

THE WITNESS: Good morning.

OFFICER WALLACE JENSEN,

called as a witness, having first been duly sworn by Mr. Guichard to testify the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION BY

MR. GUICHARD:

Q. Please be seated, state your name, and spell your name for the record, please.

A. Officer Wallace Jensen, W-A-L-L-A-C-E J-E-N-S-E-N.

Q. Can you tell us what is your current occupation?

A. I'm a police officer with the City of Richmond.

Q. All right. Can you tell us a little bit of your background, training, education, and experience as it relates to being a police officer.

A. I've been with the police department for approximately seven years. I've gone to -- I'm currently assigned to patrol. I work with the K-9, gone through K-9 school, as well as crisis negotiation

school.

Q. All right. And where did you go to the police academy?

A. I went to the Napa Valley Criminal Justice Training Center.

Q. And any college experience other than the police academy?

A. I graduated from San Francisco State University with a bachelor's degree in criminal justice.

Q. And can you tell us what was your assignment on September 19th of 2014.

A. I was on my normal shift. I work weekend graveyards. I was assigned to Beat 3, which is in the southern district and encompasses Uncle Sam's Liquors.

Q. And that -- is it called Uncle Sam's Liquors?

A. Yes.

Q. And that is on -- it's on Cutting in Richmond, the City of Richmond?

A. Yes.

Q. All right. Now, you say you worked Beat 3. That's an area, just so the jury understands. Sometimes I try to get out -- give them a little understanding of what a beat is.

A. Well, it's an area of the city that we establish borders for. My particular beat is fairly

large. It runs from Ohio Avenue to the El Cerrito border from north to south, and Carlson Boulevard to San Pablo east to west, San Pablo Avenue.

Q. And you say you're currently a K-9 officer. Were you a K-9 officer, did you have a dog on that night of September 14th of 2014?

A. Yes. I've been a K-9 officer since January of 2012.

Q. All right. And just describe for the jury on that particular night what kind of vehicle you were driving and how you were attired.

A. Well, I was driving a fully-marked Richmond Police patrol vehicle, Car 25. It's black and white with overhead red, white and blue lights. I was in fully marked Richmond Police BDU's.

Q. What's a BDU?

A. It's a utility uniform similar to what you see people in the military wearing. It has cargo pockets on the side of the pants, and large utility pockets on the chest.

Q. All right. And was your dog with you that night in your vehicle?

A. Yes.

Q. All right. Can you then tell us, let's go to what as part of your beat, Beat 3, what caused you to

go to that liquor store on Cutting that particular evening?

A. Well, in lineup, or in briefing, we had a discussion about the loitering problem picking back up at Uncle Sam's.

My lieutenant asked that during the course of my shift for that weekend I drive by Uncle Sam's, see if there's anybody loitering in front of the store, make contact when applicable with those individuals loitering in front of the store, make any arrests if possible or, you know, just let people know that loitering in front of Uncle Sam's was not going to be tolerated, and that we were going to take enforcement action if necessary.

Q. All right. And just tell us -- tell the jury a little bit about what the loitering problem was that caused your understanding of the lieutenant to bring that to the attention of people at lineup.

A. Well, I had personally not seen it for awhile. Earlier that year there was a loitering problem. People were hanging out in front of the store. They were buying alcohol and drinking it in front of the store.

There's posted signs for no loitering and not to consume alcoholic beverages in front of the store.

So I had not seen it on the weekends. It might

have a been a problem that was coming up during the week, or during different times of the day. So on that day, or that night, I made it a point to drive over there at some point during my shift.

Q. All right. And when you went over there during your shift, where did you park your vehicle?

A. I parked my vehicle around the corner from the liquor store. I was parked on Stege Avenue.

Q. And why did you park around the corner?

A. Just to -- if there was anybody loitering, I could catch them by surprise. So, you know, if I drove up, they were just going to start to walk away as soon as they saw my patrol vehicle. So I wasn't going to give them the opportunity to just start walking away.

Q. And in general your purpose would be to encourage people to leave, tell them to leave; is that correct?

A. Yes. You know, if I never made contact with an individual before, I'd warn them and advise them that there was no loitering in front of the store. There were signs posted not to loiter in front of the store, and if they were seen out there again that, you know, appropriate action was going to be taken.

Q. And when you got out of the vehicle that night did you leave your dog in the car?

A. Yes.

Q. All right. Did you leave the engine running?

A. Yes.

Q. Why did you leave the engine running?

A. So my dog -- well, I leave the engine running to run the air conditioner so my dog has air. I usually tend to leave his windows up, that way there's no possibility that somebody can do anything to harm my dog.

Q. Okay. Now, when you got there you parked your vehicle, you left the motor running, and you had parked in a position so that if somebody was loitering in front they wouldn't be able to see your car parked; is that correct?

A. Yes.

Q. And then you walked up to the front of the liquor store?

A. Yes.

Q. All right. And what did you observe?

A. There was nobody in front of the liquor store doors. I did see a group of individuals a little farther west from the liquor store doors.

Q. Can you tell us approximately how far?

A. Fifty feet.

Q. Okay. So in the general area of the store; is

that correct?
A. Yes.
Q. Okay.
A. They were standing on the sidewalk. There were vehicles parked against the curb where they were standing. I made eye contact with the female that was in that group, and she automatically -- she was actually leaning up against the building, and she stood up and she said, "We know. We're leaving." And then she said something to the effect of, "Hey, let's get out of here. We're not supposed to be here" to the group of individuals.
Q. And you heard that?
A. Yes.
Q. All right. And then you indicated there was a female. Were the other three people males?
A. Yes. I believe all -- it was a group of four. I only recall seeing one female, so I would assume the rest were males.
Q. All right. And, in fact, did the female leave?
A. Yes. They all left. They started walking away westbound on Cutting towards Carlson.
Q. All right. And then what did you do?
A. Since there was nobody in front of the liquor

store I was going to leave. I started walking back to my patrol car.
Q. Okay. And anything unusual happen? Anyone call your attention?
A. Yes. As I was walking in front of the liquor store doors eastbound towards Stege, I was, I guess, flagged down by a clerk inside the store. He caught my attention by saying, "Officer, Officer."
And I turned, I looked inside, and he made a comment in regards to, he said, "He's causing problems" as he was pointing behind him while he was looking at me.
Q. So you were looking at him. He was in the store and he was pointing behind him. So whatever problem he was directing to was inside the store?
A. Yes.
Q. Okay. And then what did you do?
A. I asked him who he was referring to specifically, and to specifically tell me. There was a lot of people inside the store, so I had no idea who he was talking about. And then he turns sideways and he points directly at Mr. Perez.
Q. All right. And then what did you do?
A. So I called Mr. Perez out, told Mr. Perez to step outside the store, and to have a seat on the

sidewalk, or on the curb in front of the store.
Q. And, in fact, did he do that?
A. Yes. He complied. He said, "Okay. No problem." He walked over to the curb and he sat down.
Q. Okay. And tell me, anything unusual about his gait or anything such as that when you had contact with him and watched him go out and sit on the curb?
A. Well, initially when the store clerk contacted me and pointed behind him, I observed Mr. Perez standing behind him. At the time I didn't know his name, and I could tell he was unsteady, he was swaying from side to side.
He had made some comments while inside the store. His speech was slurred, and I don't recall exactly what he said while he was in the store. But after, you know, he walked over to the curb, he was still unsteady on his feet, he sat down, and he was very talkative. He kept talking, and he was very animated with his hands. They were in front of him.
I asked him for his ID card. He told me he didn't have one. I tried to clarify whether he didn't have it on him or if he had never had one. And he told me, "That Chinese motherfucker took it from me."
So he -- while he was saying that, he kept repeating his address.

Q. What address was he repeating?
A. Off the top of my head I believe it was [redacted]
[redacted]
Q. So a Richmond address?
A. [redacted]
Q. And you understood that that's where he indicated he lived?
A. Yes. I knew -- he had repeated it a few times and I wrote it down and I asked him, "Is that where you live?" And he said, "Yes."
Q. Now, do you have such things as contact cards that when you contact somebody such as this you put the information down?
A. Yes.
Q. And were you doing that, in fact, getting some information from him?
A. Yes.
Q. All right. And at that point he was seated on the curb and you were standing over him and having a discussion?
A. Yes. I was standing to his right.
Q. Okay. All right. And when he indicated he talked about some other officers taking his or -- he didn't say an officer. Did you believe that when he spoke of someone of Asian ascent that he was speaking of

a police officer?
A. Yes.
Q. Okay. And why did you think that?
A. He had made reference to being arrested the night before, or at least being contacted by the Asian officer the night before.
Q. An Asian officer, a Richmond officer?
A. That was my assumption.
Q. All right. And do you have an Asian officer who was working the beat the night before?
A. Yes.
Q. And who was that?
A. Well, it's Officer Matsui. He works the same beat I do. He just works a different shift. He works on swing shift.
Q. And so Matsui sounds Japanese rather than Chinese quite frankly?
A. Yeah, but, you know, people commonly make that mistake so I just assumed that he was referring to Officer Matsui.
Q. And did you then attempt to make some contact with Officer Matsui?
A. Yes. I switched over to -- I asked Officer Matsui to go over to our non emergency channel via our police radio.

Q. And what channel is that? Channel 2?
A. Yes.
Q. Okay. Just tell us about that. So you can switch off the emergency channel to another channel --
A. Yes.
Q. -- and who can hear that other channel, channel 2?
A. Well, channel 1 is monitored by dispatch and everybody that's working the street or investigations that day during those hours.
Channel 2 has a dispatcher assigned to it. She monitors the channel, or he, and it's recorded. It's used for when we want to have quick conversations so we don't tie up our primary channel. Also for non emergency traffic. So wants and warrants checks, vehicle registration checks, or just general information that we need from dispatch.
Q. All right. So it's safe to assume that you switched over to that non emergency channel to speak with Officer Matsui?
A. Yes.
Q. And did you actually talk with him?
A. Yes.
Q. All right. And did he tell you anything about his contact with Mr. Perez the night before?

A. Well, I had asked Officer Matsui if he was in the area of Stege and Cutting, he told me he was not. He was at the police department.
And I don't recall now where he was, but he told me he was at the police department and, I believe, he said he could be en route to my location.
Q. All right. And then anything, at that point, unusual happen with Mr. Perez?
A. Yes. As I was talking with Officer Matsui over the radio, Mr. Perez stood up from the curb and began to walk westbound away from me.
Q. All right. Did he say anything as he walked away, that you heard?
A. Well, as he was walking away I don't recall him saying anything at the moment, but I told him to come back. I advised him that he was being detained. He wasn't free to go.
He, in fact, had asked me that when I first asked him to sit down on the sidewalk. He had asked me if he was being detained and if he was free to go.
Q. And what did you tell him?
A. I told him he was being detained; that he was not free to go.
Q. All right. But, in fact, at sometime when you were standing -- were you standing right over him

talking with Officer Matsui and he was right there present?
A. Yes.
Q. In other words, you didn't walk away. You stayed right there?
A. I stayed right there.
Q. All right. And then Mr. Perez got up and started to walk away?
A. Yes.
Q. All right. And at any time did he say anything to you when you said to him, "Come back"?
A. Well, he said something to the effect of "Fuck this. I'm out of here. I'm done."
Q. All right. And what did you do in response to that?
A. Well, then I attempted to place Mr. Perez under arrest. I grabbed ahold of his right arm. He pulled away from me. I then grabbed him by the collar of his T-shirt and conducted a rear brief takedown.
Q. And just to describe it, you grabbed him and pulled him to the ground?
A. Yes, while taking out his legs.
Q. All right. So taking out his legs. So you swept his legs out from under him, took him to the ground, and in a violent fashion; is that correct?

A. Yes.
Q. All right. And then you get on top of him?
A. I fell on top of him. I was struggling to gain control of his hands. At some point he started to stand up and, you know, I was pushing him back down.
I then grabbed ahold of my radio to request a cover to be en route. I asked -- I keyed my lapel mic. I asked dispatch to -- the word I said was "route me one," which was referring to a cover officer.
I don't recall hearing a response from dispatch because I still struggled with Mr. Perez on the ground. As I keyed my mic, he stood up.
Q. Let me stop you for just a second and go back. What were you saying to him when you attempted to gain control of his hands?
A. While I was struggling with Mr. Perez on the ground, I was telling him to stop resisting, to stop fighting, that he was now under arrest. I repeated that over and over.
Q. All right. Now you keyed your mic. Were you still on channel 2?
A. Yes.
Q. And normally if you would ask for backup you would be on channel 1; is that correct?
A. Yes.

Q. All right. So you had not switched back to channel 1 during the period of the struggle; is that correct?
A. That's correct.
Q. All right then. So you indicated then he tried to get up as you were trying to arrest him, he's moving his hands, you can't get control of him. Did he actually get up again?
A. Yes. He was able to stand up to his feet. I stood up with him. We were face-to-face, and that's when I did a front brief takedown.
Q. And describe for that. That's another time you took to the ground?
A. Yes. It's similar to a judo throw. You stick your leg out in front of the person and throw them over your head.
Q. Again, kind of a violent -- you took him to the ground again; is that correct?
A. Yes.
Q. All right. And did he submit to your arrest at that point?
A. No.
Q. All right. And describe for us what happened.
A. Well, we fell to the ground. He was able to grab a hold of my left arm. I was struggling to gain

control -- he grabbed my left arm with his right hand, and I was struggling to gain control of his left hand or arm. He was trying to push me off of him the whole time. I continued to tell him to stop resisting.
He would begin to roll to his right side in an effort to stand up and roll me off of him. I pushed him down on the left side of his body, his chest area or shoulder. That's when I began to feel something pulling on my gun.
Q. Are you right handed or left handed?
A. I'm right handed.
Q. So he had a hold of your left arm?
A. He had a hold of my left arm, correct.
Q. Was there any other individual around or was it just Mr. Perez when you felt this something pulling on your gun?
A. At that time it was just Mr. Perez and I.
Q. Okay. And you indicated, so did you -- were you able to look to see whether or not he had his hand on your gun?
A. Initially the -- I felt several pulls on my gun. Initially I thought I might have been caught on something nearby, but then as I looked around to see what I was near, I was in an open area.
So I then looked down and I see Mr. Perez's left

hand on the grip of my gun, and he's pulling the firearm. So he's pulling my gun up. I could see the hood on my holster being stretched in a direction it's not supposed to go. At that point, fearing that Mr. Perez was attempting to gain my firearm from my holster in an effort to kill me, I pushed back down on top of Mr. Perez's hands to keep my firearm holstered.
I then stood up, Mr. Perez stood up with me. His hand was still on the grip of my firearm. My hand was on top of his, when I hit Mr. Perez, or pushed him with my left hand in an effort to gain some distance.
At that point his hand, his left hand came off of my firearm, and I drew my firearm from the holster.
Q. Approximately, when you drew your firearm, how close were you to Mr. Perez?
A. We were close. A couple feet.
Q. All right. Did Mr. Perez turn and run away from you?
A. No.
Q. What did he do?
A. Mr. Perez had his hands out in front of him as I drew my firearm to a retention position --
Q. And what's a retention position?
A. It's where you keep your firearm close to your body for close quarters battle. You know, if somebody's

within arm's reach, you don't want to present the firearm to them.

Q. So in other words, you wouldn't reach it out like this (indicating). You would keep it in close to you, is that what a retention position is (indicating)?

A. Correct. I was, I would consider it, low retention. It was near my hip. So I had my arm back with the firearm close to my body (indicating).

Q. And your concern was that Mr. Perez would attempt to gain control of it?

A. My concern was that Mr. Perez would attempt to take my firearm and use it against me to kill me.

Q. And so -- and then what happened?

A. So as I drew my firearm to lower tension, Mr. Perez lunged towards me with his arms extended, and I fired one round.

I then backed up. Mr. Perez continued to advance, and as I was backing up, I was drawing my firearm to a more level position out in front of me.

As he made the second advance, I fired the second round. Mr. Perez didn't stop. He continued advancing towards me to when I fired the third round.

After firing the third round, Mr. Perez grabbed a hold of his chest and he bent at the waist. I continued to back up to gain more distance, and evaluate the

situation.

Mr. Perez then stumbled inside the liquor store, Uncle Sam's. I then got -- grabbed a hold of my lapel mic, and I advised that shots had been fired.

I heard the dispatcher on the radio acknowledge, and I realized I was still on channel 2. So nobody on our primary channel had heard what just occurred. I switched over to our primary channel, I advised shots fired again. I advised that the suspect, Mr. Perez, was down, and I requested an ambulance to respond code 3.

Q. And did, in fact, an ambulance, fire and ambulance respond?

A. Yes.

Q. And you indicated that he was down. And where was he down? Inside the store?

A. He's down inside the store.

Q. And did you secure the store and witnesses at that time?

A. I began to secure the store as I was the only one out there.

Q. All right. And securing the store means what? Ensuring that nobody comes and goes?

A. Correct.

Q. All right. And ultimately fire and ambulance

arrived, and other police officers arrived?

A. Yes.

Q. All right. And at that point were you then sequestered?

A. Yes.

Q. Okay. Can you describe for the jury what sequestered is.

A. It's when another officer takes you to a location where you're kept away from everyone else.

Q. So you don't have the ability to discuss what happened. You're sequestered. You're taken from it.

Where were you taken?

A. Initially I was taken to the Richmond Police Department. I sat in the break room, and then I was taken to the Crown Plaza Hotel in Concord after that.

Q. And was your service weapon taken from you?

A. Yes.

Q. And when did that take place?

A. It took place while I was at the police department in the break room.

Q. All right. Now, I want to go back a little bit and say when you shot Mr. Perez, you had indicated you were in fear for your life that Mr. Perez was going to attempt to take your gun and shoot you?

A. Yes. I was afraid he was going to take my gun

and kill me.

Q. And let me ask, during the struggle with Mr. Perez you've indicated several times you took him to the ground.

Did you ever gain control over Mr. Perez during the course of those struggles?

A. No.

Q. Can you tell us, and I understand how difficult it may be considering what happened, can you give us perhaps a time frame from the time that you first started to struggle with him until the time shots were fired?

A. I know now it was one minute.

Q. How do you know now that it was one minute?

A. I've seen the -- between the time -- well, between the time I arrived at Uncle Sam's and the time that I advised shots fired, two minutes had passed by the time. And then between the contact -- it was just looking at the dispatch information I was able to get the time.

Q. All right. Is there anything else you'd like to add here to your testimony, Officer Jensen?

A. No.

MR. GUICHARD: All right. Thank you. You're free to go.

I'm going to call our next witness, Richmond Detective Hector Esparza.

Raise your right hand, please.

DETECTIVE HECTOR ESPARZA,

called as a witness, having first been duly sworn by Mr. Guichard to testify the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION BY

MR. GUICHARD:

Q. Please be seated. State your name and spell your name for the record, please.

A. My name is Hector Esparza. The first name is spelled H-E-C-T-O-R, the last name is spelled E-S-P-A-R-Z-A.

Q. Can you tell us your current occupation.

A. I'm currently employed as a Richmond Police Department homicide detective.

Q. How long have you been with the Richmond Police Department?

A. I've been with the Richmond Police Department for just about 24 years.

Q. And is that the only police agency you've been with?

A. Yes.

Q. So you heard me ask Officer Jensen a little bit about his background. Can you tell us -- I'll ask you about your education afterwards.

Can you tell us your training and experience as it relates to being a police officer. In other words, when you went to the academy, what academy, that kind of thing.

A. I went to the Napa Valley Police Academy in 1990. In my 24 years of experience I've worked, first it was the assault unit, then the robbery unit, and then robbery/homicide unit. That was in the late 90's, early 2000's. My second stint in homicide began in 2011 and that's where I currently am.

As far as training, I've been to numerous training courses, some I can't even recall off the top of my head, but various homicide, search warrant classes, robbery, instruction classes, many.

Q. All right. Tell us a little bit about your education after high school.

A. I went to Diablo Valley College and obtained my A. A. degree.

Q. When was that? I'm not going to ask you your age. When was that?

A. Eighty-seven, '88, '89, somewhere in there.

(Cell phone ringing.)

MR. GUICHARD: We'll just take a minute and hopefully somebody can turn off their telephone.

There we go. Not a problem. It happens all the time unfortunately. But for those of you who have your phones on, except for those who you need to put it on silent, that's perfectly appropriate. I'm sure there are a number of people here who need to be in emergency contact.

But for those of you who just have it on audible, please turn it off. Thank you.

Q. All right. What was your specific assignment on September 14th, 2014, at the Richmond Police Department?

A. I was assigned as the lead detective, the lead Richmond detective.

Q. And what I'd like you to do, Detective Esparza, I'm going to get it out of Senior Inspector Soler the idea of the County protocol, but can you just tell us your understanding of this protocol, the law enforcement involved fatal incident you call it protocol?

A. What the protocol is basically and generically is in high profile major incidents the detective -- I'm sorry -- the DA's office, investigators and DA's, district attorneys, are also called out and it's a joint

investigation with dual responsibility split almost equally, I believe, almost every single time. They do interviews together. There's different assignments, then again it's a shared responsibility.

Q. So it's fair to say this is one of those such accidents. It's an officer-involved shooting and the protocol was invoked and the District Attorney responded?

A. That's correct.

Q. All right. And a number of teams were formed. Who were you partnered up with?

A. I was partnered with Inspector Jeff Soler.

Q. From the District Attorney's office?

A. Yes.

Q. All right. And can you tell us a little bit of the background then of what -- you have a number of teams of detectives from Richmond partnering up with a number of members of the District Attorney's investigative division; is that correct?

A. Yes. Every detective is partnered up with an inspector. The overall supervision management of the incident is usually controlled by either one of the DA's, the chief inspectors, and then the Richmond Police supervisor, or sometimes multiple supervisors.

Q. So in this particular case when did you first

learn of this shooting involving Mr. Perez?
A. I got a call at my house from Lieutenant Tyrona at about 12:35 on the morning of the 14th.
Q. So just a little after midnight you understood there had been a shooting in the city.
Did you have an understanding about what time that shooting had taken place?
A. Just that it was fairly recent before the call.
Q. All right. And then did you respond to the scene or to the Richmond Police Department?
A. I went straight to the scene.
Q. All right. And was Mr. Perez still present, his body at the Sam's Liquors on Cutting?
A. Yes.
Q. A number of emergency personnel there?
A. Multiple people there, including other detectives, supervisors, and inspectors.
Q. All right. And as part of this investigation, I just want the jury to understand, as part of the protocol, was there a meeting of detectives from Richmond at some point with members of the District Attorney's office to assign tasks and process this investigation?
A. Yes. After I left the scene I went to the Richmond Police Department. People come in at various

times because they live at different distances, things like that, and they spend more time at the scene. But at some point we all got together at the briefing room at the Richmond Police Department, and that's where assignments are given, where responsibilities are divvied out, and where the detectives are partnered up with the inspectors.
Q. So what I'd like the jury to understand is approximately how many teams were put together between a Richmond detective and a senior inspector. Just give us an approximation.
A. In this particular case, it's a rough estimate, but there were many, many people working on it. I would venture to say maybe seven teams.
Q. All right. And those teams then are tasked with investigating the scene, contacting witnesses, contacting the family, doing various things; is that correct?
A. Uh-huh. Contacting other emergency personnel there, other people that are on scene, including store employees, securing evidence, starting to get some of the background information, various things.
Q. All right. Now, go specifically to what your team did. Can you describe for us what your team did.
A. Inspector Soler and I, our primary

responsibility was to interview Officer Jensen.
Q. All right. And where did that interview take place?
A. That interview took place at the Concord Marriott — not Marriott.
Q. The Crown Plaza?
A. Yes. Yes.
Q. All right. And so you had an interview of him; is that correct?
A. Yes.
Q. All right. And as part of that I had asked him about being sequestered. Can you describe for us what that is and why that happens.
A. Sequestering is an isolation of the officer so he doesn't have contact with other witnesses, other persons, just another officer. They're not to discuss the case. The officer, the other one -- the other officer is there for support, if needed, but mostly just to make sure there is no other contact.
We pick hotels because sometimes these investigations take many, many hours and the officer then can relax, or at least try to relax, and eat, things of that nature.
Q. All right. And that sequestration then, is the purpose to ensure that witnesses don't get together and

kind of conform their stories the same? It's so that the officer would be sequestered, and in the interview would give a story of precisely what happened, not tainted by having discussions with anyone else?
A. Yes. It's to get the visceral, natural recollection that officers have when involved in these types of incidents.
Q. All right. Now, after your interview with Officer Jensen, what else did you do?
A. We met again, a debriefing. We talked about what other detective teams, other inspector teams, or the joint teams, I should say, had found out. Information, of course, is always coming in, so we were learning about other things.
So as more things that need to be done come up then, of course, we divvy those out and deal with those as they come up.
Q. And, in fact, is one of the roles of these teams to interview any civilian witnesses, in addition to police witnesses?
A. Yes.
Q. And, in fact, was that done?
A. Yes.
Q. Okay. Were there a number of civilian witnesses to this particular incident?

A. Yes.
Q. All right. Can you tell us did you have an interview with an individual, a civilian by the name of [redacted], or were you aware of that interview?
A. I did not interview [redacted], but I know that he was interviewed by a police officer at the scene because he was there at the time of the incident and he was interviewed by a detective/inspector team thereafter.
Q. All right. Now, as part of a Coroner's Inquest, I'll just let people know, that we do allow hearsay evidence. And so what I'm going to ask you to do is, please, if you wouldn't mind, tell us essentially what [redacted] said during his interview.
A. [redacted]. He said he got off of work around midnight, or actually I think it was a little before that, but he got off work and he went to the liquor store to pick up a beer. So he drove there from his work location.
Q. All right. And once there, what did he say he observed?
A. He got out of his vehicle and was walking towards the store and then he saw Mr. Perez -- he didn't know him, of course, but I'm going to refer to him as such -- exiting the store with a police officer behind

him.
Q. All right. And just continue, if you don't mind, in narrative form essentially what he observed.
A. At first Mr. Perez was cooperating, but then Mr. Perez tried to walk away. So the officer took him to the ground and then a struggle, or I believe he referred to it as a tussle, occurred.
He said that the officer was on top of Mr. Perez. Then he saw Mr. Perez reaching towards the duty belt of the officer. And from the initial interview done at the scene by the police officer he said that he saw Mr. Perez grab the handle of Officer Jensen's firearm. He said that Mr. Perez started getting the upper hand in the struggling, that they both then stood up, and the officer was retreating. That Mr. Perez came at Officer Jensen, and then Officer Jensen fired three rounds at Mr. Perez, at which time Mr. Perez went into the store and collapsed.
Q. Can you tell from the report did [redacted] say he made those observations from outside the store?
A. When he -- some, but some were before.
Q. I see. All right. Any other civilian witnesses that were interviewed that actually saw the struggle itself?
A. Inspector Soler and I interviewed a [redacted]

who was in the store before the incident and then exited right before it happened and then observed it from outside.
Q. All right. And what did [redacted] tell you specifically with respect to what she observed as to what happened with the officer and the shooting?
A. She said she was in the store purchasing a beer and getting some other stuff. She saw Mr. Perez inside of the store. There was some sort of communication between Mr. Perez and the store clerk regarding buying alcohol on credit. The store clerk didn't want to sell it to him, then told him to leave or else they would call the police.
Mr. Perez was not dissuaded. Instead he got his -- he had his phone in his hand and he, according to [redacted], dialed 911 on it. Didn't send it, but dialed 911 and then showed it to the store clerk. She took it to mean that, you know, if you want to call the police, here's my phone, here's 911, go ahead and do it.
The store clerk didn't take the phone from Mr. Perez and didn't call, however, that's right about the time Officer Jensen arrived.
One of the store clerks went to the front door of the store and contacted Officer Jensen, and then [redacted] bought her merchandise and then exited the store.

And she said that when she exited the store the struggle was already occurring and she had to step over and around Officer Jensen and Mr. Perez. She then went to her vehicle where she retrieved her phone, it was on the center console, and began recording portions of the incident.
Q. All right. And have you seen what she recorded?
A. Yes.
Q. Okay. Was there also a video within the store?
A. Yes.
Q. Okay. And have you observed that?
A. Yes.
Q. Now, can you see any of the struggle outside the store from the video that you observed?
A. Yes.
Q. All right. And just describe for us, we're not going to show the video, but I just want the jury to understand that there's these various videos and things that took place during this investigation and you've reviewed them. So tell us what you saw.
A. [redacted] videos or the store video first or --
Q. Let's try the store video first.

A. Okay. Specifically the confrontation or would you like me to describe --

Q. Yes. Just describe can you see -- you see Mr. Perez inside the store. You can see that; is that correct?

A. Yes.

Q. All right. And then you see his contact by Officer Jensen?

A. Yes.

Q. All right. And see them leaving the store?

A. Officer Jensen was not in the store. He was outside. Perez was in the store, then he went outside with the officer.

Q. Okay. Anything else of note that you can see from the video, the in-store video?

A. Okay. With the in-store video there were several views. The pertinent and main view was directed from, I would say, right around where the cashier desk is area or the counter area, I should say, pointed towards the front door at a, I would say slightly southeast type direction. Looking from south, north towards the east I should say.

Mr. Perez, first the clerk can be seen contacting the officer near the front door. Mr. Perez is slightly behind the store clerk. He goes outside with the

officer.

In the video you can see Mr. Perez take a seat on the curb in front of the store with the officer standing in front of him. That lasts for a few seconds.

In the video then you can see Mr. Perez stand up and begin walking in a westerly direction. Officer Jensen follows behind.

Somewhere near the window to the left of the front door you can see the struggle begin. The view is very limited. You don't see particularly the takedown or how it was done.

Mr. Perez was wearing a black T-shirt and Officer Jensen was wearing a dark-colored uniform, so it's hard to make out. What you can see is, for example, Mr. Perez had a short-sleeved shirt on so you can see his arms because they were a lighter color in contract to his shirt. You can see Officer Jensen's head. And the struggle basically, at least that part of it, occurred in front of the window to the left if you're looking from the store outside.

From inside the store, the left window, you could see some flailing around, and then you can't really tell that they get up or not. They appear to rise somewhat, and then go back down. Again, some more flailing, and then after another few seconds you see Officer Jensen

stand up. You can see Mr. Perez stand up. You can see Mr. Perez come towards, I would describe it as a type of lunge, towards the officer.

The officer unholsters and it's kind of a -- it's almost a motion thing so it's not -- I'm describing the process. Unholsters his firearm as Perez is coming towards the officer, and then you don't see the shots being fired, but you can see the reaction from Mr. Perez on the video. Mr. Perez then goes into the store and collapses towards the front of the store.

Q. Now, with respect to the video of that individual that you viewed is [redacted]; is that correct?

A. Yes.

Q. All right. So you reviewed her video?

A. (Witness nods head.)

Q. It's my understanding -- Is that a yes?

A. Yes.

Q. It's my understanding that it's in ten-second increments, so it's not a full on video; is that correct?

A. Yes. It's some sort of social media video type function site that I've never heard of called Snapshot, and it only records in ten-second increments, and that's what she recorded on, and there were three different

segments.

Q. All right. Just give the jury a general sense of what those segments showed.

A. Two of those videos were post shooting. They were after the shooting. They just basically show Officer Jensen on the radio, his handgun still in his hand, requesting other units.

You can hear him -- there's also audio on it. You can hear him telling some person or persons to get back, and that's what they showed.

The more relevant video slip shows the struggle between Officer Jensen and Mr. Perez as it's occurring. Officer Jensen is on top of Mr. Perez. It appears that Officer Jensen is holding, I would say, the wrists based on my recollection of Mr. Perez. There's flailing back and forth. Mr. Perez has his legs separated. He's pivoting at one point on a hip trying to gain leverage it appears.

At one point in the ten-second clip in that video Officer Jensen loses control of Mr. Perez's left hand. Mr. Perez can be seen with his hand around the right side of Officer Jensen's duty belt.

When the video, the ten-second clip gets to its conclusion and it stops, you can see Mr. Perez -- you can't see his hand on the gun. You can't see him

grabbing the gun. That's just not visible. But what you can see is Mr. Perez's hand and arm pretty much in the position where Officer Jensen's gun would be. But, of course, that part isn't visible. Just the positioning is visible.

Q. All right. Any other video that you are aware of that is part of this investigation came to light?

A. Some of the witness statements indicated somebody else may have been videotaping the incident on their phone or attempting to videotape it on their phone, but no other videos have surfaced.

Q. All right. It's about time for our break, so we're going to take -- we're going to take a break until 20 minutes to the hour promptly please.

Members of the jury, don't discuss the case among yourselves or with anyone. We'll be back here promptly at 20 minutes to and we'll finish up the testimony of Detective Esparza and then we'll call our final witness, Inspector Soler.

Thank you.

(Recess taken.)

MR. GUICHARD: All right. We are back on the record in the matter of the death of Mr. Perez.

Q. We have officer -- excuse me, Detective Esparza still on the stand. You're still under oath. Just a

couple final follow-up questions.

There had been some testimony from Officer Jensen about contact that Mr. Perez had with, I'll call it an Asian officer.

Did you, as part of this protocol on this investigation, did you determine that there had been recent contact, in fact, the day before, by an Asian officer of the Richmond Police Department with Mr. Perez?

A. Yes. The day before, and it wasn't Officer -- Officer Jensen thought it was Officer Matsui that had contact with Mr. Perez, but it wasn't. Officer Jensen believed that because Matsui worked the same beat where the store is and so it's logical to assume that, but it was not.

The officer that took the DUI the report the day before and had contact with Mr. Perez was an Officer Nguyen, who is of Asian descent, and Lieutenant Whitney was also on scene for the DUI arrest.

Q. And that DUI arrest, so that's a driving under the influence arrest?

A. Yes.

Q. So fair to say Mr. Perez was arrested the day before for DUI?

A. Yes.

Q. All right. What I'd like to do is ask you, there's some, you know, in reviewing all the reports, there were a number of witnesses, family members, friends, witnesses, a number of people, one of whom appeared to be [redacted]

Do you recall reviewing reports of that interview?

A. Yes.

Q. Can you tell us what her name was and what she had to offer by way of her interview.

A. Sergeant Smith spoke with [redacted]. The interview took place on October 2nd and it was a phone conversation, a recorded phone conversation.

Sergeant Smith was referred to [redacted] through Captain Mark Gagan. I don't know if they spoke or not, but that's who referred him to her.

Q. All right. And just give us the gist of that interview as it relates to this investigation.

A. She talked a little bit about the background. She said that Richard Perez lived with her [redacted] for about a year.

That he had -- that Richard Perez had lived with his mom prior to that. That the mom put Richard Perez out because the mom likes the house tidy and neat and there was some issue with that. So she put him out.

And Richard Perez, when he lived with her, [redacted], there were some issues with his substance abuse. She said he suffered -- Richard Perez suffered from anxiety. That, you know, he would deal with the anxiety through chemical use, primarily alcohol, or I think she said mostly alcohol. I don't know if there was other -- alcohol was the main one.

And that when he would drink he would lose his temper, and her husband and her were concerned for people who lived in the house, and so they put him out. And she talked a little bit more about the background.

She seemed like a very nice lady and the conversation -- the interview lasted several minutes, but that's --

Q. Any indication in that interview, if you can recall, about any issues of Mr. Perez thinking that his life might end at some point?

A. Yes. He had started having contacts with the police department and that added to his downward spiral. She said that she spoke with Richard Perez on his birthday the year before, [redacted], and he told her that he did not think he was going to make it to his 21st -- I'm sorry, 25th birthday because all good Americans don't make it to 25.

She also said that she didn't hear this from

Richard directly, but that she heard from other people that they were told by Richard that he was going to die at the hands of the police, or with a gun, and within the next -- well, actually, the other thing that she said was that he would die and spend forever in a liquor store, something like that.

Q. And that was all a recorded interview; is that correct?

A. Yes. The very start of the interview is not recorded. Sergeant Smith must have activated his recorder after -- I don't know what the amount of time was but, yes, it's a recorded conversation.

Q. Now, I want to have you just give us -- you've spoken a little bit about the background of Mr. Perez, and I want you to advise the jury the criminal background of Mr. Perez.

And I always tell jurors this is not done in my way to disparage Mr. Perez or his memory or anything. There are certain cases where I want a detective to talk about his background just to give the jury some understanding of perhaps why this event happened, perhaps why Mr. Perez acted in the fashion that he did.

So I'm just going to ask you to give us a brief background of Mr. Perez's history please.

A. His criminal history is not significant. It's

fairly short, and it's all been within the last two -- two, three years, two years I would say. [redacted] In her statement, she said that Richard Perez was detained during a check point. They searched his car and found a gun in the front, [redacted] Of course there was the DUI contact the day before the officer-involved shooting. [redacted]

It's not a long history, but it's in the last couple years you can see the increased activity and you can kind of see the downward spiral, or at least the pattern beginning to emerge.

Q. All right. Detective Esparza, is there anything else you'd like to add to your testimony here today?

A. Just real briefly, I think I will make a note of it, is during the detention Richard Perez did call the Richmond Police Department on 911 and spoke with one of our dispatchers. The call didn't last long and the gist of it was Richard Perez telling our dispatcher that

he was being harassed. That he was being harassed by an Asian officer.

You can hear at the end of the 911 call Officer Jensen talking to Officer Matsui on the radio. You can hear Officer Jensen telling Richard Perez to sit down. Presumably that's when he's getting up. You can then hear the struggle start, and then the phone disconnects.

Q. All right. Thank you. You may step down. You're free to go or you can remain if you'd like.

A. Thank you.

MR. GUICHARD: I'm going to call our final witness, Senior Inspector Jeff Soler of the Contra Costa County District Attorney's office.

Raise your right hand, please.

INSPECTOR JEFF SOLER,

called as a witness, having first been duly sworn by Mr. Guichard to testify the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION BY

MR. GUICHARD:

Q. Will you please be seated.

State your name and spell your last name for the record, please.

A. Jeff Soler, J-E-F-F S-O-L-E-R.

Q. Can you tell us what your current occupation is,

A. I'm a senior inspector with the Contra Costa District Attorney's Office.

Q. And can you tell us what a senior inspector with the Contra Costa District Attorney's office does.

A. We are primarily assisting the District Attorney, the attorneys in their case work when it comes to making contact with witnesses, serving them with subpoenas, and sometimes it might be some additional investigation on cases, but it's all for trial preparation.

Q. And you're a sworn police officer; is that correct?

A. Yes.

Q. Can you tell us, give us your background, please, training, experience and education.

A. I have been a sworn police officer for a little over 25 years. Eighteen years of that was spent at the Richmond Police Department. The last seven years have been with Contra Costa County. And the last four of those have been with the District Attorney's office.

I have approximately 14 years of investigative experience. My educational background is I have a bachelor of arts degree and a law degree, and I just

have the typical POST education or POST training that's offered to all police officers.

Q. And POST is Police Officers Standards of Training; is that right?

A. Yes.

Q. All right. Now, you've indicated your background for us, and I actually asked -- most of the questions that I would normally ask I asked of Detective Esparza because I think we have a good understanding of what happened.

I'd just like you to expand a little bit on the role of the District Attorney's office in this officer-involved protocol that we have here in the county. Just give us a little background, and tell the jury the reason for this independent agency, the District Attorney's office, getting involved in these kinds of investigations.

A. Sure. I understand this protocol has been in place for 25, 30 years. What takes place is there's a venue agency, or the location where the incident occurs, and the protocol consists of inserting the district attorney's office into the investigation, as well as the Contra Costa County crime lab into the investigation.

And in this kind of case what we're doing is we're conducting a parallel investigation inquiring into the

cause and circumstances of the incident. Right now it was the cause and circumstances of the death.

So we join with the venue agency in that investigation, conducting our own parallel investigation. There is never an opportunity where there's only one representative who's going to be involved in the interviews. There's always that second body. It's all meant to maintain everything as objective as possible, and that's what we try to endeavor.

Q. And so you were part of that but we've already heard with Detective Esparza. And I just want to give the jury some understanding of how comprehensive and extensive this investigation is. Take as many days as you need to take to contact witnesses and determine what happened.

A. You know, we're conducting a fact-based inquiry into what happened. And that includes interviewing witnesses, some of whom are primary witnesses who were there. Some of whom may have some information about the individuals that weren't present at the time. Some also may have responded to the scene after the fact. So there are primary, secondary witnesses. We try to conduct interviews of them to get as complete a picture as possible as to what happened.

And in this case, you know, you might not be able to catch up with some of these witnesses for a day or two days or so, so it may take a few days to do it.

Generally the orchestration of who goes out and interviews who is done by, like in this case, it was the chief of inspectors and some of the senior officers of the City of Richmond.

So they each identify the necessary tasks that need to be handled and the people who are going to be involved in handling that task.

Q. All right. I think we've received all the evidence. I'm going to ask you to step down and thank you for your testimony here today.

We are now -- all the evidence has been completed in this case. I'm going to instruct you in the law. As I indicated, I have copies of the instructions for each one of you. I always make extra copies. If we have some representatives of the family or anyone else who's interested, we have some extra copies, so we'll pass them out. I'm then going to read those instructions out loud here in court. You will have them in your hands while I read them.

And then we will clear the courtroom, but we'll leave -- this will be your jury room, so we'll leave you, as jurors, present in the room to deliberate as to,

as I've said, natural causes, suicide, accident, or at the hands of another, other than by accident. That's your sole role.

So at this time I'm going to ask Sergeant Shabazz, or the bailiff here, to pass out one to each one, and I have a couple of extras here. You might want to pass one out.

All right. Make sure everyone is settled because when I read the instructions, I want it to be quiet and have everyone concentrate on these.

As I said, Sergeant Shabazz, or the bailiff, will hand out copies of the jury instructions. The law, however, requires that I read them out loud to you. You will have the instructions during your deliberations, so you can consult them if you feel the need to do so.

So Ladies and Gentlemen of the jury: Having now heard the evidence, it becomes your duty to render your verdict.

You are the sole and exclusive judges of the evidence given to you from the witness stand, and from that evidence you should state in your verdict who the deceased was, how, and when and where he came to his death.

The law provides that you shall find, in addition to the medical cause of death, what was the mode or

manner of the decedent's death. To that end, the law provides that you must find whether the decedent's death was by natural causes, or suicide, or accident, or at the hands of another, other than by accident.

Each mode of death is alternative and independent of the others so that you cannot combine verdicts. You cannot add to any of the definitions. You may make a separate comment if you wish, but not on the verdict form.

The four modes of death are as designed as follows: Natural causes: Death by natural causes is so well known to all of you as generally to require no explanation. However, for the purpose of this proceeding, it may best be defined as a death arising from an act of nature as opposed to one being artificially induced.

Suicide: Suicide is defined as an intentional act of self-destruction by one with sufficient touch with reality to understand the nature of his act.

Accident: Death by accident can refer to a variety of unforeseen or unintentional events. Some of those involve natural phenomena, such as death by fire, flood, or earthquake in which no human agency is involved. Another species of accident is the kind which results from human acts or conduct. Death by accident where a

human agency is involved is thus best defined as the unintended or unexpected results of human conduct. The term "accident" as it applies to these proceedings is an unforeseen event, misfortune, loss, act, or omission.

At the hands of another, other than by accident: That phrase is essentially self-explanatory. It is either an intentional act which directly causes the death of another person, or an intentional omission to act which directly causes the death of another person.

You should determine the mode or manner of death herein by a more likely true than not true standard. That means in examining all the evidence you should decide which mode or manner of death of the four listed modes is the most likely to be true.

Therefore, if you should determine that the evidence here is more convincing and creates a greater probability of the truth in favor of one mode, that mode should be your verdict.

In determining whether a mode has been proven to be true, you should consider all the evidence bearing upon that issue. You should also bear in mind that it is the law of California that all deaths may be described by one of the four stated modes.

Your findings shall not include, nor make any reference to civil or criminal responsibility on the

part of the deceased or any other person.

Under the law that governs inquests, there is no requirement that your verdict be unanimous. A simple majority is sufficient.

I have not intended by anything I have said or done, or by the questions that I have asked, to intimate or suggest how you should decide any questions of fact submitted to you.

If anything I have done or said has seemed to so indicate, you will disregard it and form your own opinion.

Members of the jury: This will be your jury room. We'll clear the room of everyone but members of the jury during your deliberations. You're certainly welcome to rearrange your chairs or sit anywhere else you'd like, other than this spot because I have my notes here.

Sergeant Shabazz will give you four verdict forms. One for each of the four possible modes of death. Once you reach a verdict, we will ask that you fill out the appropriate verdict form. We ask that everyone sign the verdict form once you reach a verdict.

Should the verdict be less than unanimous, I nevertheless ask each juror to sign the verdict form to signify that the verdict was reached.

In cases where it's less than unanimous, I always

poll the jury to ask. So if anyone has a comment or disagrees, they'll have that opportunity when I poll you to say that you disagree and you think it should be some other verdict.

But nevertheless, now this room will clear the room at this point. You're free to discuss the case among yourselves as you deliberate. That is now your role from this point on.

We will be in recess. I do want to say that Sergeant Shabazz, or the bailiff here, will be your contact. So no one else is your contact.

As you deliberate, if you reach a verdict, or if you need some clarification, simply contact Sergeant Shabazz. We'll all be outside, and we'll try to clarify it.

Once you reach a verdict, also contact Sergeant Shabazz and we'll come back into session and read your verdict. All right. Everyone understand?

All right. We are now in recess. We are off the record and we'll clear the courtroom.

(Recess from 11:03 a.m. to 11:17 a.m.)

MR. GUICHARD: All right, everyone. We are back on the record in the matter of the death of Mr. Perez.

I understand you reached a verdict. I have a copy of the verdict form here.

I'm going to omit the caption and simply read the verdict of the jury.

The verdict of the death -- of the jury in this case, death was caused by at the hands of another, other than by accident.

Members of the jury, is that your verdict?

THE JURY: Yes.

MR. GUICHARD: Is it a unanimous verdict?

THE JURY: Yes.

MR. GUICHARD: All right. Then there is no reason to poll the jury.

You are now free to go. You are free to discuss the case if you choose. And what I say to that is that you are under no requirement that you talk about the case, but you can talk about the case. So you can talk among your friends. So now you can go home and tell your loved ones what you did today and you can actually talk about the case.

Sometimes people like to talk to jurors. In my experience, most jurors don't want to talk to people, so you don't have to. You can simply go and enjoy the rest of your day.

I always make myself available at the end because it's an interesting process, and sometimes jurors or people want to ask me about it, I'll make myself

available. But you certainly don't have to talk to me if you don't want to.

One of the most important things now is you have to give your badges to Sergeant Shabazz. If you need a note from work, you can go around to the jury services office and take care of that.

Your jury service is complete. I want to thank you very much for your service here today. I'm sure everyone here involved appreciates the time you put into this matter.

All right. We are off the record and everyone is excused. Thank you.

(Whereupon, the proceedings were concluded at 11:20 a.m.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF CONTRA COSTA)

I, JULIE MAGGI VASTA, CSR, License No. C-2947, do certify:

That the foregoing deposition contains a full, true and correct transcription to the best of my ability of my shorthand notes;

That the proceedings were reported at the time and place therein stated by me, a Certified Shorthand Reporter, and thereafter transcribed into typewriting;

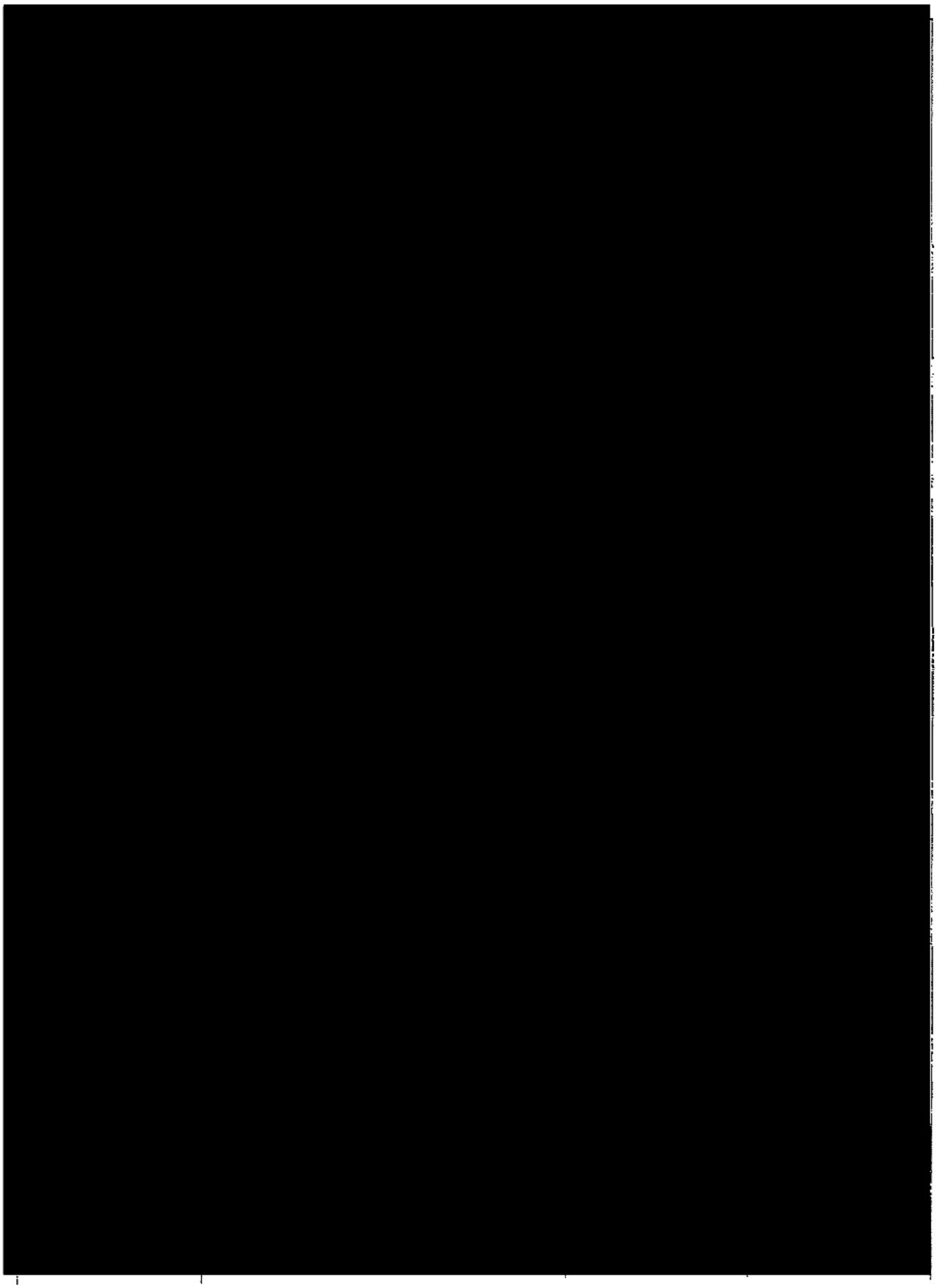
I further certify that I am not interested in the outcome of said action, nor connected with, nor related to, any of the parties of said action or to their respective counsel.

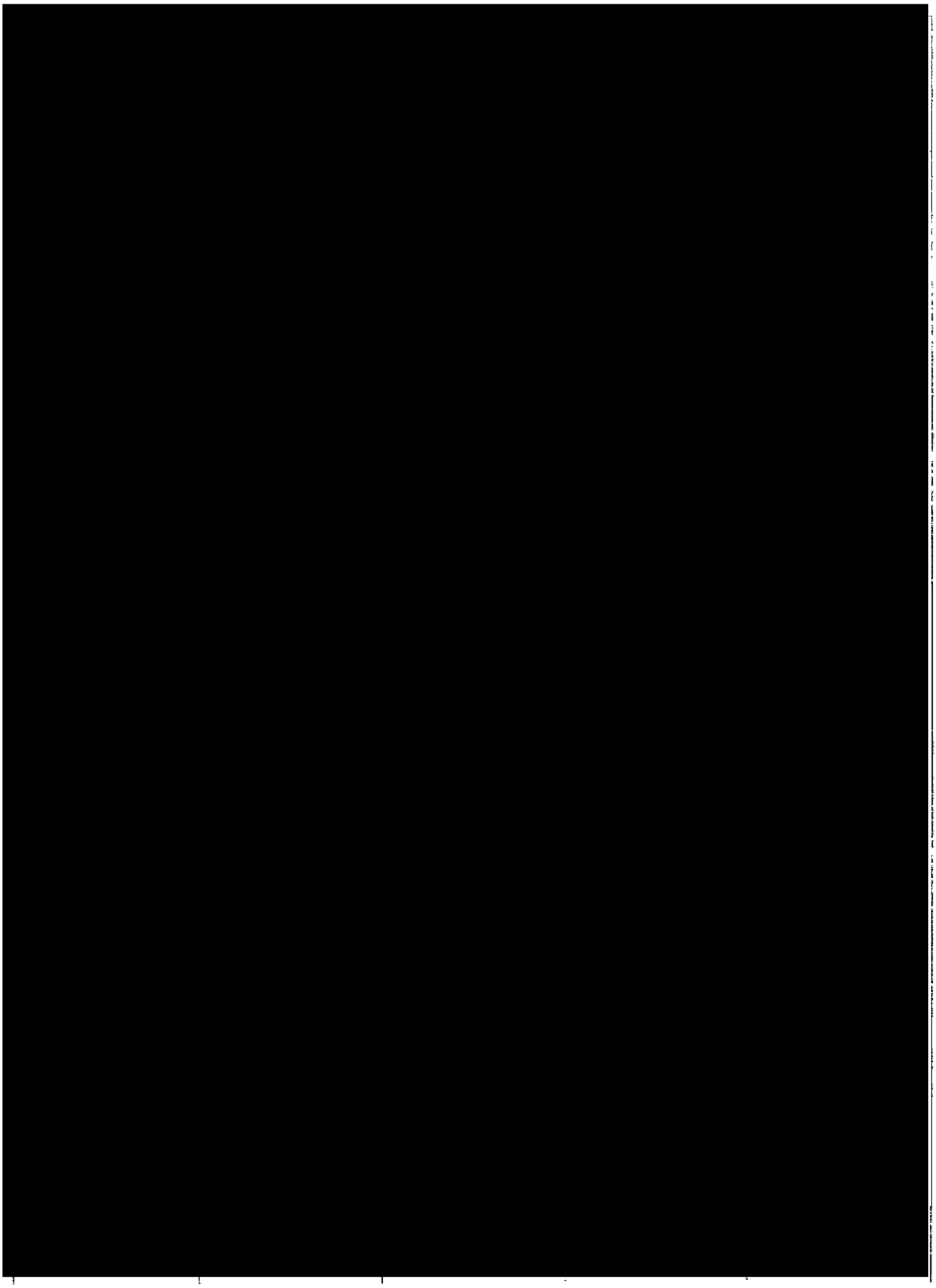
IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of December, 2014

JULIE MAGGI VASTA, CSR, License C-2947

[redacted]

[redacted]





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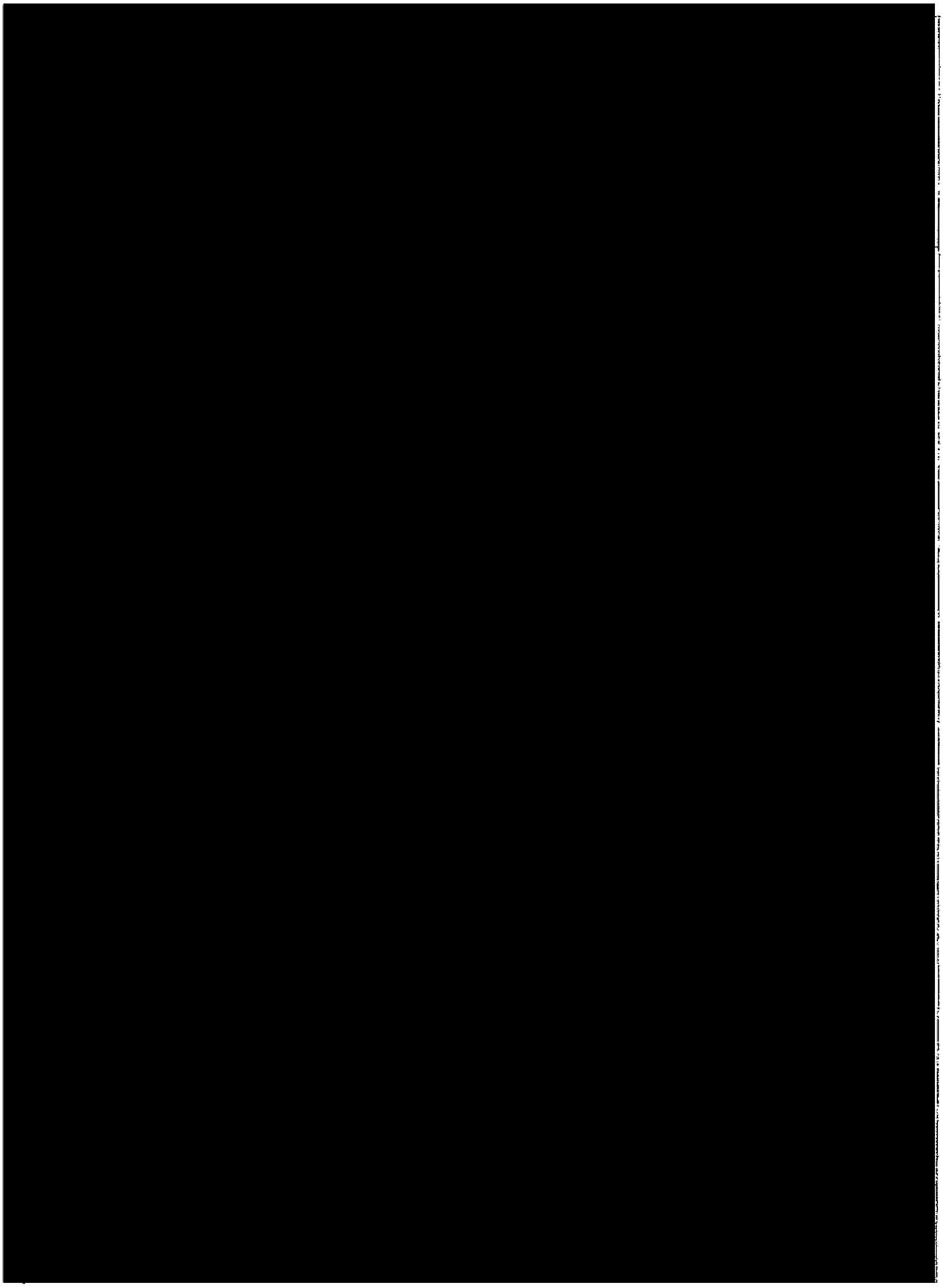

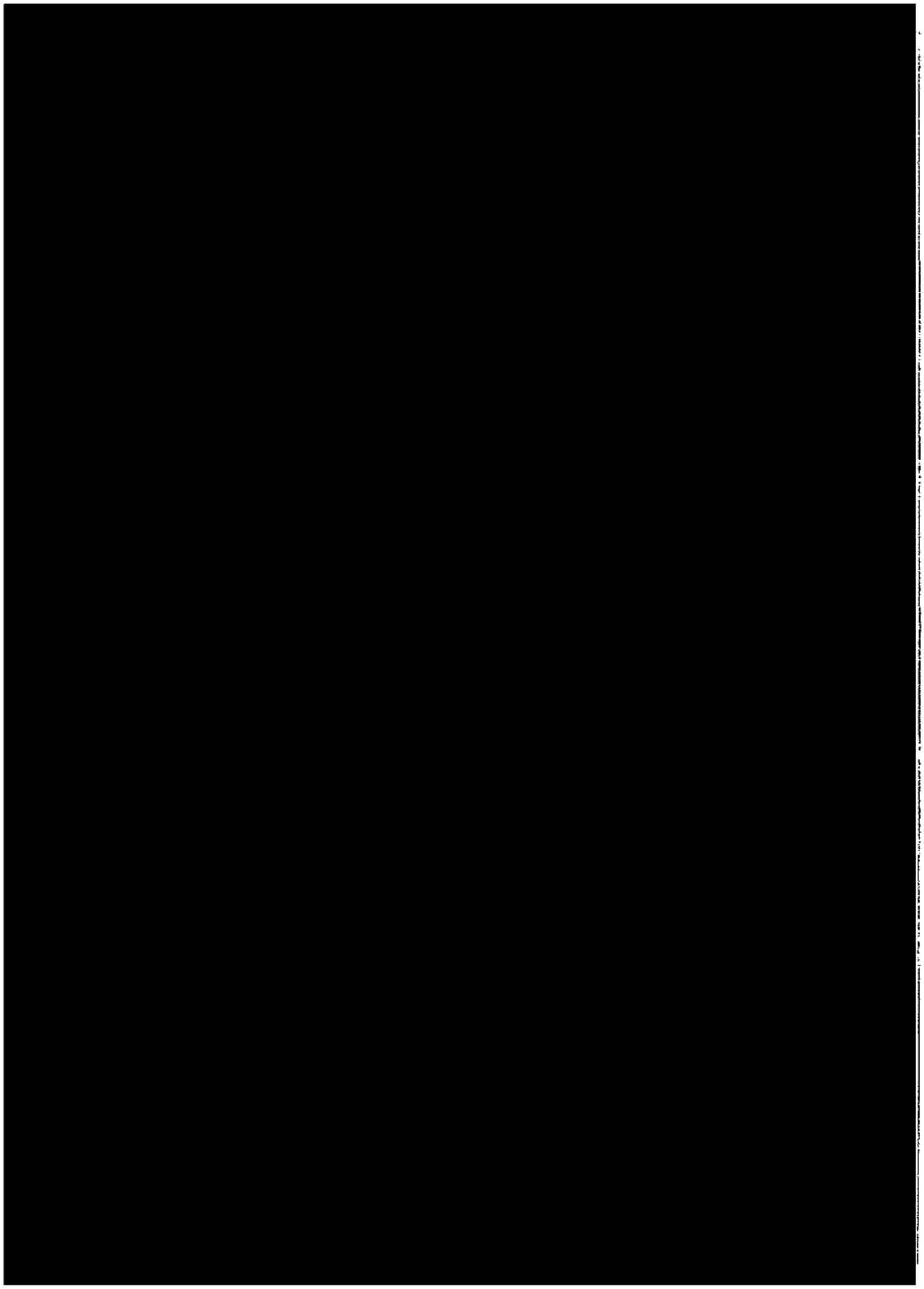

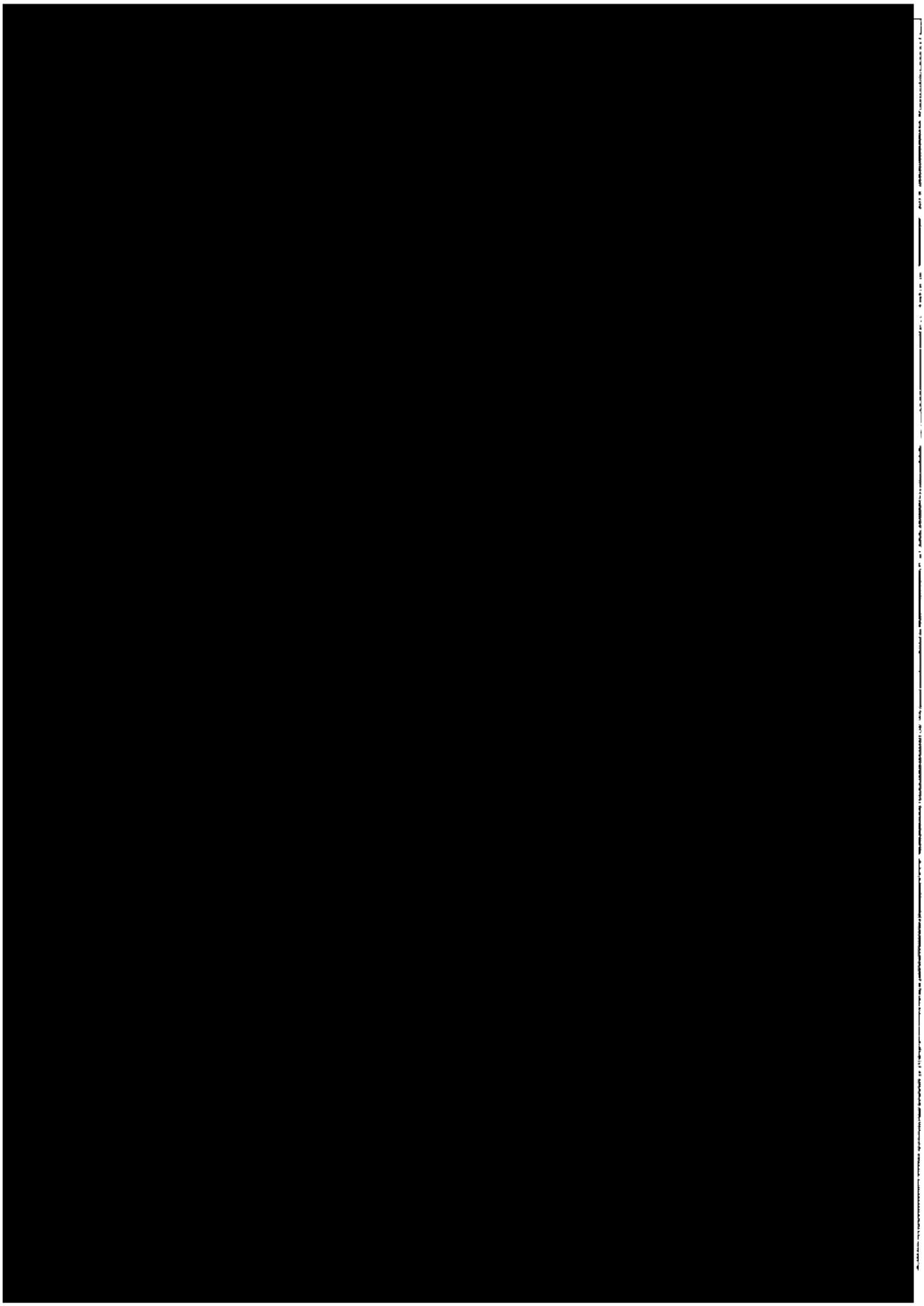

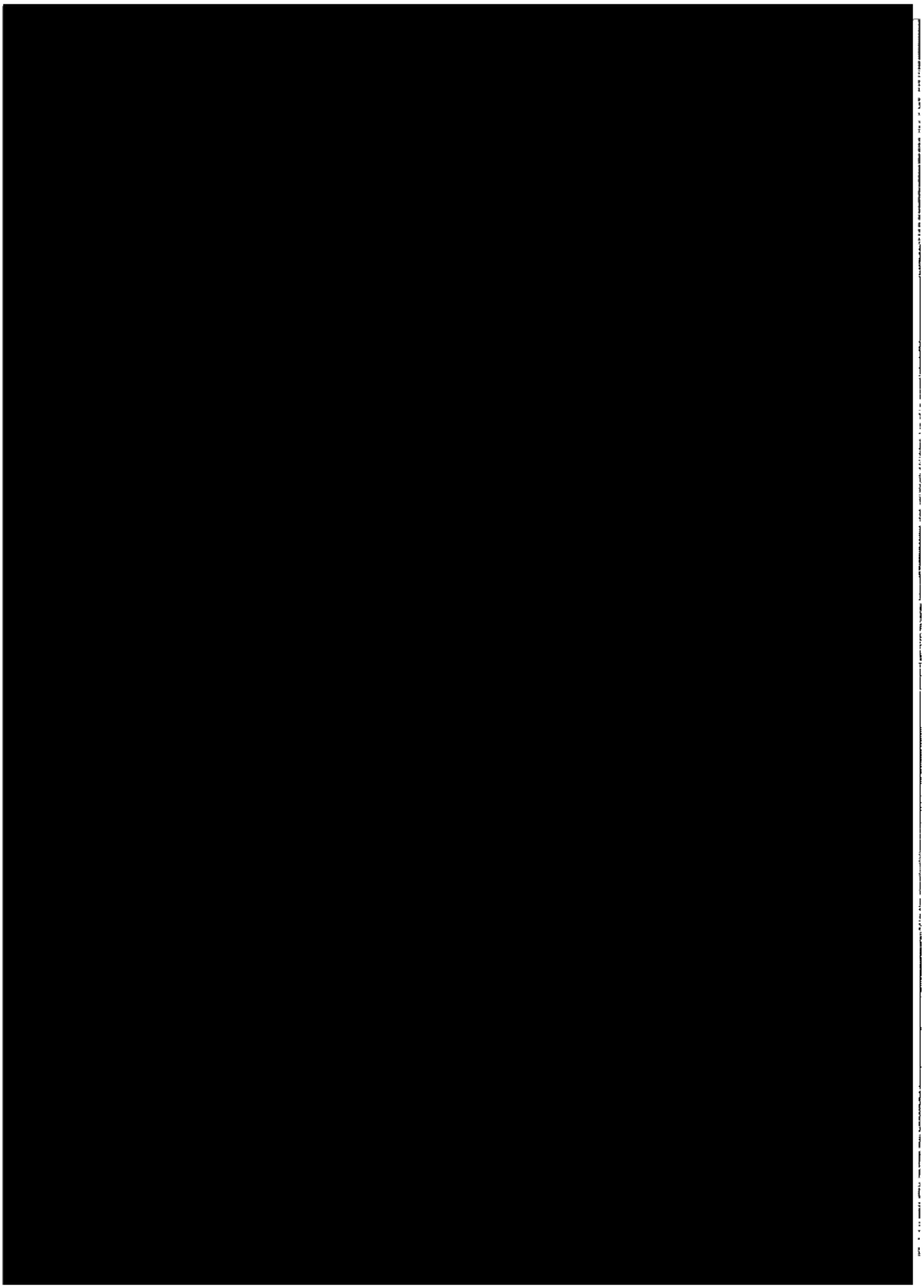

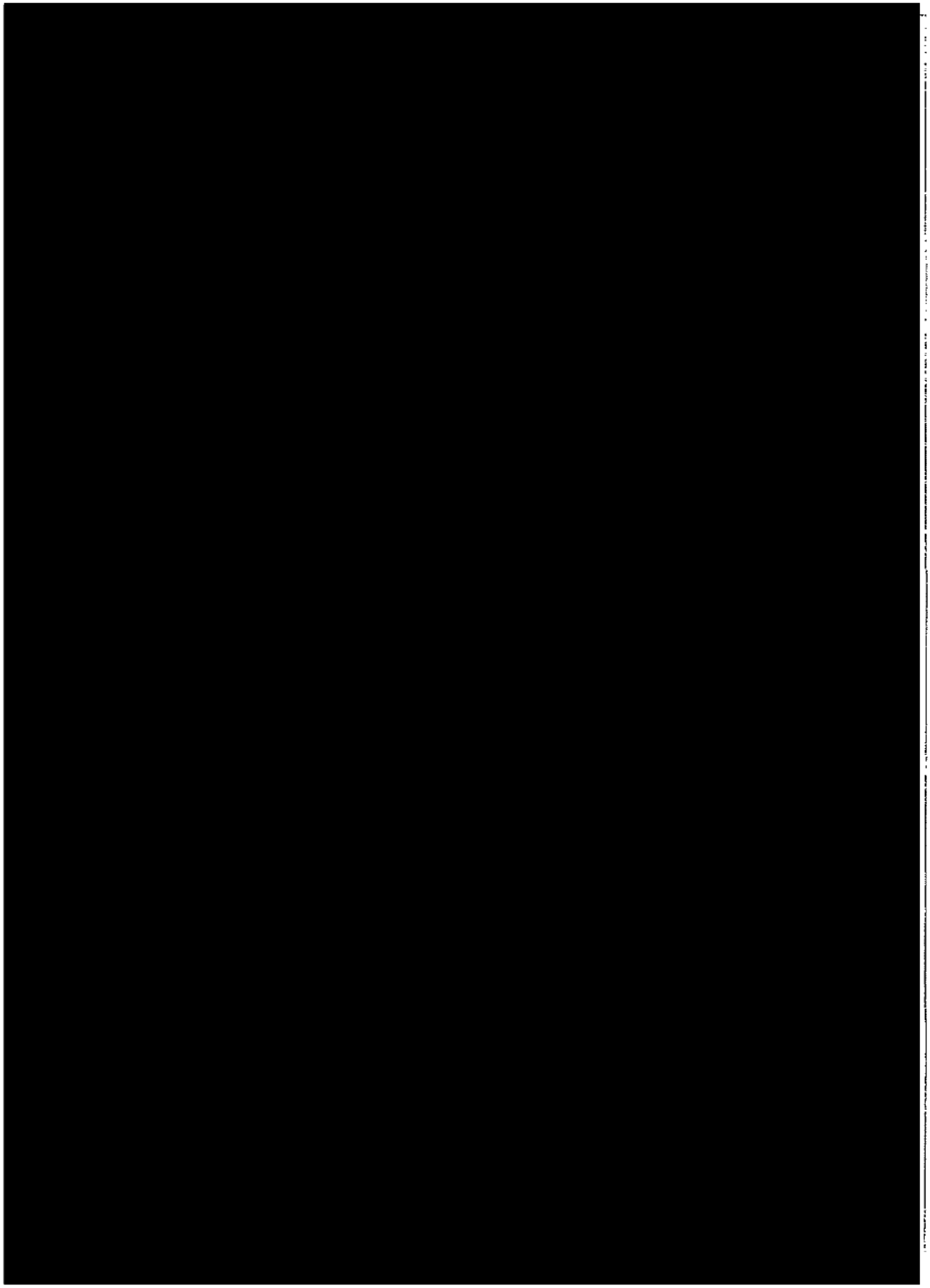

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